

1 **H. B. 3268**

2
3 (By Delegates Williams, Mahan, Marshall, Stowers, Iaquina, D.
4 Poling, Phillips, Manchin, Reynolds, Guthrie and Walters)

5
6 (Originating in the Committee on Finance)

7
8 [February 23, 2011]

9
10 A BILL to amend and reenact §11-6B-2 of the Code of West Virginia,
11 1931, as amended, and to reenact §11-6B-4 of said code, all
12 relating to who may claim a homestead exemption for purposes
13 of ad valorem property taxes and providing that surviving
14 spouse of a claimant must refile to retain the homestead
15 exemption after the death of a claimant.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §11-6B-2 of the code of West Virginia, 1931, as amended,
18 be amended and reenacted; and that §11-6B-4 of said code be amended
19 and reenacted, all to read as follows:

20 **CHAPTER 11. TAXATION.**

21 **ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.**

22 **§11-6B-2. Definitions.**

23 For purposes of this article, the term:

24 (1) "Assessed value" means the value of property as determined
25 under article three of this chapter.

26 (2) "Claimant" means a person who is age sixty-five or older
27 or who is certified as being permanently and totally disabled, and
28 who owns a homestead that is used and occupied by the owner thereof

1 exclusively for residential purposes: *Provided, That:* (1) If the
2 property was most recently used and occupied by the owner or the
3 owner's spouse thereof exclusively for residential purposes; (2) the
4 owner, as a result of illness, accident or infirmity, is residing
5 with a family member or is a resident of a nursing home, personal
6 care home, rehabilitation center or similar facility; and (3) the
7 property is retained by the owner for noncommercial purposes, then
8 the owner of that property may continue to claim a homestead
9 property tax exemption on the property. *Provided, however, That*
10 if the property was most recently used exclusively for residential
11 purposes and occupied by the owner or the owner's spouse as joint
12 tenants with rights of survivorship, and the claimant dies, leaving
13 the surviving spouse who is not sixty-five years of age or
14 permanently and totally disabled with rightful ownership, the
15 surviving spouse may retain the homestead exemption as the claimant
16 so long as the spouse occupies the property as his or her residence
17 and the property is exclusively used for residential purposes.

18 (3) "Family member" means a person who is related by common
19 ancestry, adoption or marriage including, but not limited to,
20 persons related by lineal and collateral consanguinity.

21 (4) "Homestead" means a single family residential house,
22 including a mobile or manufactured or modular home, and the land
23 surrounding such structure; or a mobile or manufactured or modular
24 home regardless of whether the land upon which such mobile or
25 manufactured or modular home is situated is owned or leased.

26 (5) "Owner" means the person who is possessed of the
27 homestead, whether in fee or for life. A person seized or entitled
28 in fee subject to a mortgage or deed of trust shall be considered

1 the owner. A person who has an equitable estate of freehold, or is
2 a purchaser of a freehold estate who is in possession before
3 transfer of legal title shall also be considered the owner.

4 Personal property mortgaged or pledged shall, for the purpose of
5 taxation, be considered the property of the party in possession.

6 (6) "Permanently and totally disabled" means a person who is
7 unable to engage in any substantial gainful activity by reason of
8 any medically determinable physical or mental condition which can
9 be expected to result in death or which has lasted or can be
10 expected to last for a continuous period of not less than twelve
11 months.

12 (7) "Sixty-five years of age or older" includes a person who
13 attains the age of sixty-five on or before June 30 following the
14 July first assessment day.

15 (8) "Used and occupied exclusively for residential purposes"
16 means that the property is used as an abode, dwelling or habitat
17 for more than six consecutive months of the calendar year prior to
18 the date of application by the owner thereof; and that the property
19 is used only as an abode, dwelling or habitat to the exclusion of
20 any commercial use: *Provided*, That failure to satisfy this six-
21 month period shall not prevent allowance of a homestead exemption
22 to a former resident in accordance with section three of this
23 article.

24 (9) "Tax year" means the calendar year following the July
25 first assessment day.

26 (10) "Resident of this state" means an individual who is
27 domiciled in this state for more than six months of the calendar
28 year.

1 **§11-6B-4. Claim for exemption; renewals; waiver of exemption.**

2 (a) *General.* -- No exemption shall be allowed under this
3 article unless a claim of exemption is filed with the assessor of
4 the county in which the homestead is located, on or before December
5 1, following the July ~~first~~ 1 assessment day. In the case of
6 sickness, absence or other disability of the claimant, the claim
7 may be filed by the claimant or his or her duly authorized agent.

8 (b) *Claims for disability exemption.* -- Each claim for
9 exemption based on the owner being permanently and totally disabled
10 shall include one of the following forms of documentation in
11 support of said claim: (1) A written certification by a doctor of
12 medicine or doctor of osteopathy licensed to practice their
13 particular profession in this state that the claimant is
14 permanently and totally disabled; (2) a written certification by
15 the social security administration that the claimant is currently
16 receiving benefits for permanent and total disability; (3) a copy
17 of the letter from the social security administration originally
18 awarding benefits to the claimant for permanent and total
19 disability and a copy of a current check for such benefits, marked
20 void; (4) a current social security health insurance (Medicare)
21 card in the name of the claimant and a copy of a current check to
22 the claimant, marked void, for benefits from the social security
23 administration for permanent and total disability; (5) a written
24 certification signed by the veterans administration certifying that
25 a person is totally and permanently disabled; (6) any lawfully
26 recognized workers' compensation documentation certifying that a
27 person is totally and permanently disabled; (7) any lawfully
28 recognized pneumoconiosis documentation certifying that a person is

1 totally and permanently disabled; or (8) any other lawfully
2 recognized documentation certifying that a person is totally and
3 permanently disabled.

4 (c) *Renewals.*

5 (1) *Senior citizens.* -- If the claimant is age sixty-five or
6 older, then after the claimant has filed for the exemption once
7 with his or her assessor, there shall be no need for that claimant
8 to refile unless the claimant moves to a new homestead.

9 (2) *Disabled.* -- If the claimant is permanently and totally
10 disabled, then after the claimant has filed for the exemption once
11 with his or her assessor, and signed a statement certifying that he
12 or she will notify the assessor if he or she is no longer eligible
13 for an exemption on the basis of being permanently and totally
14 disabled and that the claimant will notify the assessor within
15 thirty days of the discontinuance of the receipt of benefits for
16 permanent and total disability, if the claimant originally claimed
17 receipt of said benefits to document his or her claim for
18 exemption, there shall be no need for that claimant to refile,
19 unless the claimant moves to a new homestead.

20 (3) *Waiver of exemption.* -- Any person not filing his or her
21 claim for exemption on or before December 1, shall be determined to
22 have waived his or her right to exemption for the next tax year.

23 (4) *Residential care exception.* -- For purposes of this
24 section, an otherwise qualified claimant who, as a result of
25 illness, accident or infirmity, resides with a family member or is
26 a resident at a nursing home, personal care home, rehabilitation
27 center or similar facility is not considered to have moved to a new
28 homestead.

1 (5) Death of claimant with a surviving spouse -- For purposes
2 of this section, if the property is owned by a husband and wife as
3 joint tenants with the right of survivorship and the claimant dies
4 leaving a spouse who is under sixty-five years of age and not
5 totally and permanently disabled, the surviving spouse is entitled
6 to retain the exemption from ad valorem property taxation provided
7 in section three of this article for as long as such surviving
8 spouse occupies the property as his or her residence and the
9 property is exclusively used for residential purposes. The
10 surviving spouse must refile, with a death certificate of the
11 claimant, for the exemption pursuant to the provisions of
12 subsection (a) in this section on or before December 1. When the
13 surviving spouse has filed for the exemption once with his or her
14 assessor, there shall be no need to refile as long as the homestead
15 is being used exclusively for residential purposes and the spouse
16 occupies the property as his or her residence.